

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 17 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Mr. KURT BENSHOOF,

No. 24-4394

Petitioner,

ORDER

v.

WARDEN,

Respondent.

Before: Lisa B. Fitzgerald, Appellate Commissioner.

A petition for writ of habeas corpus has been filed by “next friend” Tate David Prows on behalf of Kurt Benshoof. Although the petition was filed under 28 U.S.C. § 2254, it is treated as a petition under 28 U.S.C. § 2241 because Benshoof is a Washington state pretrial detainee, who has criminal charges pending in King County Superior Court and Seattle Municipal Court. *See Dominguez v. Kernan*, 906 F.3d 1127, 1135 (9th Cir. 2018) (stating that “§ 2241 is available for challenges by a state prisoner who is not in custody pursuant to a state court judgment – for example, a defendant in pre-trial detention”).

If a petition for writ of habeas corpus is filed in the court of appeals, “the application must be transferred to the appropriate district court.” Fed. R. App. P. 22(a); *see* 28 U.S.C. §§ 1631, 2241(b). Because Benshoof is challenging his detention arising out of criminal proceedings in King County, the

appropriate district court is the United States District Court for the Western District of Washington. *See 28 U.S.C. § 128(b); Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495 (1973) (under § 2241, the court issuing the writ must have jurisdiction over the custodian).

Accordingly, the Clerk will transfer the petition filed at Docket Entry No. 1 to the United States District Court for the Western District of Washington. The petition is deemed filed on July 17, 2024, the date on which it was filed with this court. It is noted that a similar petition for writ of habeas corpus, filed by “next friend” Benjamin Blanchard on behalf of Kurt Benshoof, is currently pending in United States District Court for the Western District of Washington case number 2:24-mc-00043-JNW.

This transfer order is issued without regard to whether Prows may file a petition for writ of habeas corpus as “next friend” to Benshoof or whether the claims have any merit.

The Clerk will serve this order on Tate Prows and Kurt Benshoof c/o Kings County Correctional Facility. The Clerk will also serve this order on the district court.

Upon transfer of the petition, the Clerk will close this original action.

PETITION TRANSFERRED to the district court.